

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JACQUELINE SCALES,  
o/b/o E.M.S.,

Plaintiff,

DECISION AND ORDER

08-CV-6533L

v.

MICHAEL J. ASTRUE  
Commissioner of Social Security,

Defendant.

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Plaintiff, Jacqueline Scales o/b/o E.M.S. (“Scales”), sought Social Security Disability Benefits for her minor daughter. That claim was apparently denied and Scales requested a hearing before an Administrative Law Judge (“ALJ”). By order dated January 11, 2007, ALJ Robert T. Harvey dismissed the case because Scales failed to notify the Social Security Administration of a change of address and she did not appear at the scheduled hearing.

Scales apparently appealed the dismissal to the Appeals Council. The Appeals Council denied Scales’ request to review the ALJ’s dismissal.

Scales commenced this action by filing a *pro se* complaint (Dkt. #1) on November 24, 2008.


Pending before the Court is the Commissioner’s motion to dismiss (Dkt. #8). That motion is granted and the complaint is dismissed.

This Court has limited jurisdiction. Judicial review in federal court only lies to review the final decision of the Commissioner made after a hearing. 42 U.S.C. § 405(g). In this case, there has been no final decision on the merits; a dismissal for failure to appear does not constitute a final decision on the merits and thus there is no jurisdiction in federal court. For all the reasons set forth by the Commissioner in its brief in support of the motion to dismiss, I find that this Court lacks jurisdiction and the complaint must, therefore, be dismissed.<sup>1</sup>

#### CONCLUSION

The Commissioner's motion to dismiss (Dkt. #8) is granted and the complaint is dismissed. Plaintiff's motion to grant payment of benefits (Dkt. #13) is denied as moot.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
November 3, 2009.

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<sup>1</sup>It does appear from the Government's submission that shortly after the Administrative Law Judge dismissed this claim, Scales filed a new claim seeking the same relief.